

# THE NEW JUVENILE RULES

## PART VI: APPEALS

# HIGHLIGHTS OF APPELLATE RULES

Substantial changes were made to the rules, intended to increase comprehensibility and functionality and expedite the process.

- Defines aggrieved party and identifies final, appealable orders.
- Specifies what constitutes the presumptive record on appeal.
- Sets standards for supplementing the record on appeal at the time the notice of appeal is filed and thereafter.
- Allows juvenile court to retain jurisdiction to rule on limited post-final orders that extend the time for filing the notice of appeal.

# NEW RULE 601: DEFINES AGGRIEVED PARTY AND IDENTIFIES FINAL ORDERS

- Current Rule 103(A) & A.R.S. § 8-235: Aggrieved party may appeal final order. No definitions.
- Rule 601(a): Party is aggrieved when order denies party “a personal or property right or imposes a substantial burden.”
- 601(b): Identifies final orders based on current case law.

# FINAL ORDERS IN DELINQUENCY PROCEEDINGS

- Disposition order for a juvenile adjudicated incorrigible or delinquent
- Restitution order entered after entry of the disposition order; if a separate appeal is filed from that order and if it is practicable, the appeal from the restitution order should be consolidated with the appeal of the disposition order.
- Disposition after court finds juvenile violated probation
- Order transferring a juvenile for prosecution as an adult.
- Any other order is appealable if it is final pursuant to Arizona case law.

# FINAL ORDERS IN OTHER PROCEEDINGS

- Order entered under Rule 340 relieving DCS of its obligation to provide reunification services.
- Order granting a dependency petition and declaring a child dependent, or an order denying or dismissing a dependency petition.
- Disposition order after dependency adjudication.
- Order granting or denying a motion to intervene.
- Order terminating visitation.

## ... MORE FINAL ORDERS IN OTHER PROCEEDINGS

- Order granting or denying a petition or motion for termination of parental rights.
- Order denying an application for adoption certification under A.R.S. § 8-105 and Rule 408, after a hearing under Rule 408(d).
- Order granting or denying an adoption petition;
- Order granting or denying a Title 8 guardianship motion;
- Order granting or denying a petition for emancipation;

## ... MORE FINAL ORDERS

- Order altering or amending a final order under Rule 317 and an order denying a motion to alter or amend a final order under Rule 317.
- Order granting or denying a motion to set aside a final order under Rule 318(c), Rule 407(f), or Rule 417.
- Any other order that is final pursuant to Arizona case law.

# APPELLATE CAPTION – RULE 602(B)

- Simplifies caption in current 103(A)
- Caption for notice of appeal (NOA) must state type of proceeding and initials of juvenile's name.
- Examples: “In re Delinquency of A.B.,” “In re Dependency as to C.D and E.F.,” or “In re Termination of Parental Rights as to G.H.”



# SUSPENSION OF JUVENILE COURT ORDER

- Like the current rule, and consistent with A.R.S. § 8-235, Rule 602(c)(1) provides the filing of the notice of appeal (NOA) does not suspend the juvenile court's order or its execution.
- A party seeking a stay of the juvenile court's order must request it in the court of appeals, which may consider child's best interests, likelihood of reversal and other relevant legal or equitable matters.

# RULE 602(g): JUVENILE COURT'S CONTINUING JURISDICTION AFTER NOA FILED

Court may proceed within its legal authority on a remaining or new issue to the extent:

- the appellate court has authorized or directed juvenile court to rule on the issue;
- ruling would be in furtherance of the appeal;
- a statute or court rule confers continuing jurisdiction; (i.e., new rules allowing court to rule on motions to alter or amend and to set aside filed within specified period); or
- ruling would not legally or practically prevent the appellate court from granting relief requested.

# RULE 602(i): LISTS APPLICABLE ARCAPS (CIVIL APPELLATE RULES) CHANGES INCLUDE:

- Rule 3(b) (Suspension of an Appeal); (Newly added)
- Rule 4 (Documents Filed 2(b), not as provided in ARCAP 4(a) and the related ARCAP forms; (Modified to reflect change in caption)
- Rule 4.1 (Paper Filing); (Newly added)
- Rule 4.2 (Electronic Filing); (Newly added)
- Rule 5 (Computing and Modifying Deadlines), except as provided in Rule 603(a)(5), which permits the juvenile court to excuse the untimely filing of a notice of appeal or cross-appeal; (Modified to reflect delayed NOA)
- Rule 9(c) (Filing of Notice of Appeal Before Entry of Judgment); (Newly added)

## . . . MORE ARCAPS

- (14) Rule 24 (Appellate Court Mandates), except appellate court may issue its mandate immediately if the appeal is dismissed upon the filing of a notice by counsel under Rule 607(e) or Rule 610, and the party has not filed a pro se brief;
- (15) Rule 25 (Sanctions) except incorporation of ARCAP 25 must not be construed to permit the imposition of sanctions against an appellant, a cross-appellant, or their attorney who files a frivolous appeal from a final order in a delinquency or transfer matter.

# TIME FOR FILING NOA AND NOTICE OF CROSS-APPEAL

## Rule 603(a)(1):

NOA must be filed no later than 15 days after entry of final order, which is the date the clerk files it “as shown by the clerk’s date stamp on the filed order”

## Rule 603(a)(2):

Notice of cross-appeal must be filed no later than 10 days after filing of NOA or 15 days from entry of final order appellant, whichever is later and except as otherwise provided by the rules.

# TIME-EXTENDING MOTIONS

Motions listed in Rule 603(a)(3) extend the time for filing a NOA to entry of the juvenile court's ruling on that motion. They include:

- Rule 317: Motion to alter or amend a final order in a dependency, guardianship or severance proceeding
- Rule 318(c): Motion to set aside a final order in a dependency, guardianship or severance proceeding (must conform to the requirements of Rule 60(b) through (d), Civil Rules)
- Rule 407(f): Motion to set aside "a final order rendered by the court" in an adoption proceeding (must conform to the requirements of Rule 60(b) through (d), Civil Rules)
- Rule 417: Motion to set aside a final order of adoption

# WHEN MUST THE MOTION BE FILED TO BE TIME-EXTENDING?

Rule 603(a)(3): Specified motions must be filed no later than 12 days after entry of a final order

# TIME FOR APPEALING: NO PRIOR NOA FILED

If no previous NOA has been filed and a party files a timely time-extending motion, under Rule 603(a)(3)(A), the time for NOA begins to run:

- When an altered or amended order is entered, regardless of whether it was entered on a party's motion or the court's initiative;
- When the court denies a party's motion to alter or amend; and
- When the court enters an order granting or denying a party's motion to set aside a final order.



# TIME FOR APPEALING: NOA FILED BEFORE THE MOTION OR WHILE THE MOTION IS PENDING

If a NOA has been filed before a timely time-extending motion is filed or the NOA is filed while the motion is pending, under Rule 603(a)(3)(B),

- Appellant must file a notice of any pending motion in the appellate court and the appeal will be suspended. Appellant must promptly notify appellate court when the juvenile court rules and the appeal will be reinstated as of the entry of the ruling on the last such motion.
- Party intending to appeal ruling on time-extending motion must file a new or amended NOA or cross NOA within the time for filing NOA or cross NOA “as measured from the entry of the order disposing of the motion.”
- If a party has filed a NOA and juvenile court alters or amends final order on own under rule 317, party need not file an amended NOA.

# MOTIONS FILED AFTER THE 12 DAYS AND NON TIME-EXTENDING MOTIONS

- Rule 603(a)(4): Juvenile court divested of jurisdiction to address motions relating to order appealed other than the kinds of motions specified in the rule as time-extending and only if filed within 12-day period. BUT, appellate court may, upon motion, suspend the appeal and revest jurisdiction to permit court to rule on any motion.
- If appellate court revests jurisdiction, an aggrieved party who challenges the ruling on the motion must file a new or amended notice of appeal.

# DELAYED NOA

Current Rule 108 provides a means for seeking leave of the juvenile court to file a delayed NOA after time has expired.

- Current rule was moved to Rule 603(a)(5); permits party to seek relief by filing a motion.
- Replaces excusable neglect with good cause for failure to timely appeal. “Good cause may include but is not limited to clerical errors of counsel that are not attributable to the client.”
- If court grants the motion, NOA or notice of cross-appeal must be filed no later than seven days after entry of the order permitting it.
- Allows appellate court to treat an untimely appeal as timely if the juvenile court grants relief while the appeal is still pending.

# RULE 604: THE PRESUMPTIVE RECORD ON APPEAL

Rule 604 (a) specifically identifies the “presumptive record on appeal”:

- All documents filed with the clerk and all exhibits admitted into evidence.
- Transcripts for proceedings that correspond to the orders identified in Rule 601.

# SUPPLEMENTAL DESIGNATION OF THE RECORD

Rule 604(b) confirms prior deadlines for supplemental designation and sets new deadlines and standards for motions to enlarge the record after record is transmitted:

No later than five days after the NOA is filed, appellant may file “appellant’s supplemental designation of record” requesting that the record include the following, which appellant reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal:

- any exhibit that has been marked and offered but not admitted,
- all or part of the transcript of any designated proceeding that is not part of presumptive record but “directly or indirectly resulted in the order from which the appeal is taken.”

## ... DESIGNATION OF RECORD (CONTINUED)

- Appellant may, in that designation, delete items from the presumptive record.
- Appellee may, no later than 12 days after NOA filed, file “appellee’s supplemental designation of record,” adding back any items excluded by appellant, and adding any other items not designated that appellee reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal.

# ENLARGEMENT/SUPPLEMENTATION OF THE RECORD AFTER THE TIME FOR SUPPLEMENTAL DESIGNATION

- No later than seven days after the appellate court sends the notice of completion of record under Rule 606(f), by motion establishing that the filing party **reasonably believes the items are necessary for proper consideration of issues the party intends to raise on appeal.**
- More than seven days after notice of completion, by motion, establishing **items are necessary for the proper consideration of issues party intends to raise on appeal, with explanation for failure to seek to expand record sooner.**

# TRANSMISSION OF THE RECORD

- Rule 606 provides clarity regarding superior court clerk's transmission of the presumptive or specially designated record.
- Makes clear that clerk must transmit the record electronically, "if feasible." Rule 606(c)(4).
- Time for filing of transcript, which is 30 days after whichever occurs first, Rule 606(d)(2):
  - Filing of NOA by government agency.
  - Filing of NOA that states appealing party was represented by appointed counsel in the juvenile court.
  - Service of notice to court reporter that appellate counsel has been appointed.
  - Appellant or cross-appellant makes arrangements to pay for transcript.



# BRIEFING IN THE COURT OF APPEALS

## RULE 607

- Rule 607(e), like current Rule 106(G), provides that counsel may file an avowal in lieu of an opening brief, stating appellant has either abandoned the appeal or the appeal lacks non-frivolous issue to raise or both, which permits appellate court to dismiss the appeal.
- The new rule requires counsel to inform the client not only of the filing of the avowal, but the right to file a pro se brief.
- Process for filing pro se brief; must be filed no later than 15 days after court's order permitting it, with no extensions absent extraordinary circumstances.
- Provides for filing of answering and reply briefs when party files pro se brief.

# BRIEF EXTENSIONS - RULE 607(c)

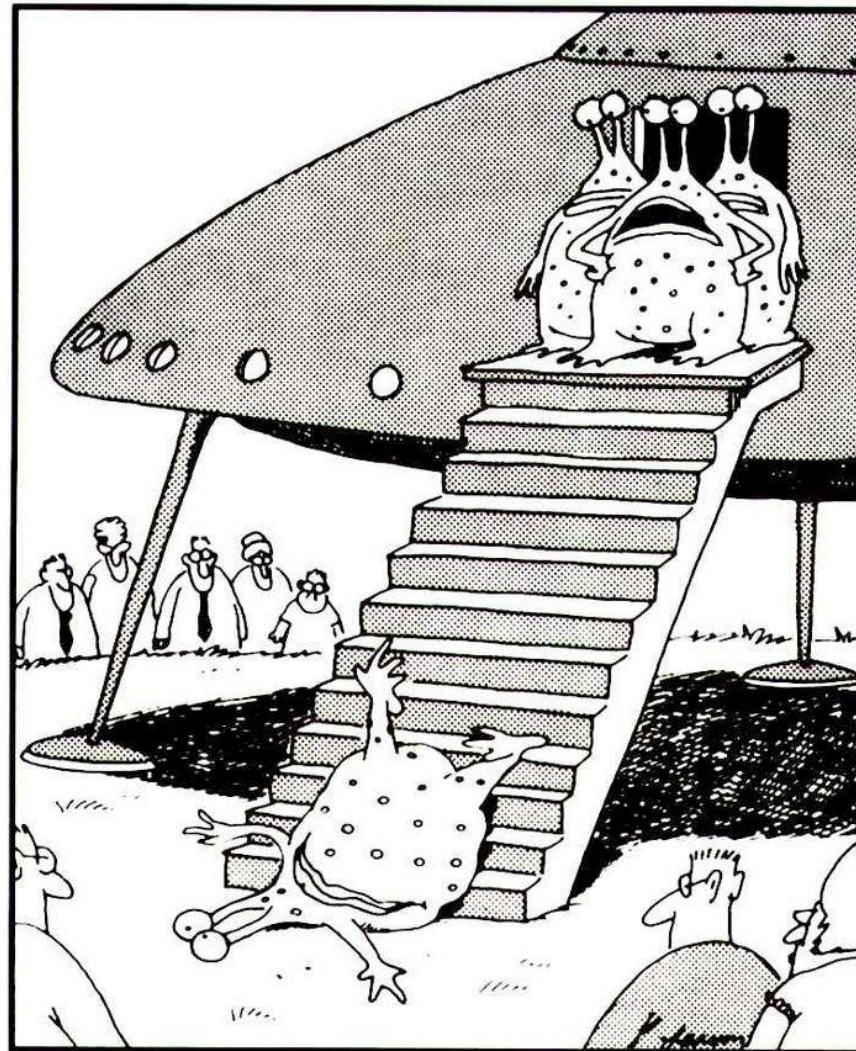
- A party seeking an extension of time for filing a brief must file a motion stating the reasons the extension is needed, and whether any party objects, or that the moving party's attempts to communicate with the other parties have been unsuccessful.
- The Court of Appeals for good cause may grant a party an initial extension of 20 days for the filing an opening or answering brief and 10 days for the filing of a reply brief.
- Further extensions only for extraordinary circumstances.

# PETITION FOR REVIEW BY THE SUPREME COURT RULE 609

Changes process of seeking supreme court review by requiring a party who expects to file a petition for review to file a notice of such intent within 15 days, permitting the appellate court to issue its mandate if no notice is filed.

# RULE 610: FREE-STANDING RULE RELATED TO APPELLATE COURT'S ISSUANCE OF MANDATE

- Permits issuance of mandate if a notice of intent to file a petition for review by the supreme court is not filed.
- Citing to Rule 607(e)(4), permits appellate court to accelerate and issue its mandate when counsel has filed a notice that the appeal has been abandoned or a notice of no non-frivolous issue, if counsel states appellant does not intend to file a pro se brief or if the appellant fails to file a timely pro se brief.



"Wonderful! Just wonderful! ... So much for instilling them with a sense of awe."